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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

REMIGIO NIEBLAS,

Defendant and Appellant.

B243851

(Los Angeles County  
Super. Ct. No. BA360224)

APPEAL from a judgment of the Superior Court of Los Angeles County. Sam Ohta, Judge. Affirmed.

Jeralyn Keller, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Stephanie A. Miyoshi and Rama R. Maline, Deputy Attorneys General, for Plaintiff and Respondent.

Remigio Nieblas was convicted of one count of murder. On appeal, he challenges the admission of certain evidence at his trial. Finding no abuse of discretion, we affirm.

### BACKGROUND

The information charged Nieblas with one count of murder in violation of subdivision (a) of Penal Code section 187 (count 1).<sup>1</sup> It further alleged that, in the commission of the murder, a principal was armed with a firearm (a handgun) within the meaning of Penal Code section 12022, subdivision (a)(1). The information also alleged four counts of extortion and two counts of robbery against a codefendant, Robert Padilla.

Nieblas pleaded not guilty. The charges against Nieblas and Padilla were tried together but to separate juries. Nieblas's jury found him guilty of first-degree murder and found the firearm allegation true. Padilla's jury acquitted him of the robberies but convicted him of all four extortion counts. In a prior appeal, we affirmed the judgment as to Padilla. (*People v. Padilla* (Oct. 30, 2013, B244585) [nonpub. opn.] )

The court sentenced Nieblas to 25 years to life, plus a consecutive sentence of one year for the firearm enhancement (to be served before the indeterminate sentence). The court also imposed various fines and fees and credited Nieblas with 1,121 days of presentence custody (1,121 actual days). Nieblas timely appealed.

Padilla and Freddy Juarez are members of the Indiana Dukes criminal street gang. The prosecution's theory at trial was that Padilla and Juarez, acting on behalf of the Indiana Dukes, extorted money from two employees of a smog check shop as payment for the gang's having killed the owner of the shop at the request of Nieblas, also known as "Juero" or "Guero." Nieblas is not a member of the Indiana Dukes, but his cousin, Stella Villa, is a member of the gang and is married to Padilla.

Luis Hernandez was the true owner of the Nayarit Smog Shop, but Hernandez had placed formal ownership of the shop in the name of Nieblas, one of the shop's employees. According to Hernandez's girlfriend, Hernandez put the shop in Nieblas's name so that Hernandez "could keep money away from his estranged kids." The

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<sup>1</sup> All subsequent statutory references are to the Penal Code.

prosecution introduced evidence tending to show that Nieblas was dissatisfied with the pay he was receiving from Hernandez and that he sought to have members of the Indiana Dukes street gang kill Hernandez, presumably so that he (Nieblas) would then own the shop.

Hernandez was shot to death on July 4, 2009. After Hernandez's death, Padilla and various associates began stopping by the shop almost daily to speak with Nieblas. The girlfriend of an employee of the smog shop testified that Nieblas referred to Padilla and the other visitors as Nieblas's "cousins."

On July 31, 2009, Padilla and Juarez arrived at the shop accompanied by two women. Padilla told two of the shop's employees, Walter Ernesto Salguero and Michael Salazar, to come into the shop's office. When all four men were inside the office, Padilla told Salguero and Salazar that they had to pay him \$500 that day and \$500 per week thereafter. Salguero and Salazar recognized Padilla and Juarez as gang members and feared for their safety if they did not pay.

After Padilla and Juarez left, Nieblas spoke with Salazar near the bay door of the shop. Nieblas was acting "nervous" and "paranoid" and was "looking around making sure no one was around" him and Salazar. Nieblas said he had "a big secret" and told Salazar that Nieblas's "cousins" had killed Hernandez and that "he [i.e., Nieblas] sent them" to do it.

Padilla and Juarez returned later that day, and Salguero gave Padilla \$500 (\$300 from the shop, plus \$100 each from Salguero and Salazar). Salazar reported the events involving Padilla, Juarez, and Nieblas to the police, who consequently stationed a task force near the smog shop on August 7, 2009. Padilla arrived at the shop on that day, and Salguero gave him \$250, which Salguero believes came from Salazar. (Through Villa, Salazar had previously negotiated that week's payment down to \$250.) The police then arrested Padilla.

## DISCUSSION

Nieblas argues that the superior court prejudicially erred by admitting evidence concerning Padilla's extortions and (alleged) robberies.<sup>2</sup> Rulings on the admission or exclusion of evidence are reviewed for abuse of discretion. (*People v. Williams* (1997) 16 Cal.4th 153, 196-197.) We find no abuse of discretion here.

First, Nieblas argues that Padilla's statements to Salguero and Salazar in the course of the extortions were inadmissible hearsay as against Nieblas, because the superior court determined that there was insufficient evidence that a murder-for-hire conspiracy still existed when the statements were made. In his opening brief, however, Nieblas does not mention that the court ultimately admitted the statements as "verbal acts," that is, as statements admitted not for their truth but because they constituted, in part, Padilla's crime of extortion. Moreover, the court instructed the jury that the statements were not admitted "for the truth of the matter asserted, but rather as verbal acts to prove the crime of extortion." In his reply brief, Nieblas contends that even if admitted as verbal acts and not for their truth, Padilla's statements were "implied hearsay" because their only relevance was based on the supposition that Padilla was "collecting money to compensate the Indiana Dukes gang for Hernandez's murder." Nieblas does not identify the implicit but inadmissible out-of-court statements on which the relevance of Padilla's express words purportedly depends, and we cannot discern them. Insofar as Nieblas has in mind his own statements to the Indiana Dukes (or intermediaries) arranging for Hernandez's murder, those statements would be admissible against Nieblas both as

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<sup>2</sup> Nieblas asserts that "the admission of Padilla's statements and evidence of Padilla's extortions and robberies violated [Nieblas's] right to due process of law, his right to confront and cross-examine the witnesses against him, his right to affirmatively present evidence in his own defense, and his right to effective representation as guaranteed to him under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and their California clones, article I, sections 7 and 15, of the California Constitution." Nieblas does not, however, develop any of these constitutional claims through legal argument or citation of authority. We therefore shall not consider them. (*People v. Stanley* (1995) 10 Cal.4th 764, 793.)

admissions and as verbal acts. We conclude that Nieblas has not shown that the superior court abused its discretion by failing to exclude Padilla's statements as hearsay.

Second, Nieblas argues that the evidence of Padilla's extortions and the statements he made in the course of those extortions was not relevant to the murder charge against Nieblas. He bases this argument on the superior court's comments, in the course of discussing the hearsay objection to Padilla's statements, that suggested there was insufficient evidence of an ongoing conspiracy when Padilla's statements were made. But Nieblas fails to mention that in a separate discussion concerning relevance, the court expressly determined that evidence of the extortions had significant probative value concerning Nieblas's role in Hernandez's murder, and that evidence of the murder likewise had significant probative value concerning the extortions. The court stated, for example, that the murder and the extortions are "relevant to each other. They tend to prove the other crime." Nieblas offers no substantive argument against the court's relevance determination, which we in any event conclude was not an abuse of discretion. Salazar testified that Nieblas told him that his "cousins" had killed Hernandez at Nieblas's request. After Hernandez was killed, Padilla and other gang members, whom Nieblas referred to as his "cousins," began coming to the shop almost daily to speak to Nieblas, and Padilla and Juarez eventually extorted money from the shop's employees Salazar and Salguero. A jury could reasonably infer that Padilla and Juarez committed the extortions to obtain payment for the Indiana Dukes' having killed Hernandez at Nieblas's request, which would bolster Salazar's testimony that Nieblas admitted his role in the killing. The evidence of the extortions was therefore relevant to the murder charge.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, Acting P. J.

We concur:

CHANEY, J.

JOHNSON, J.